

FRIDAY, 31 JAN 69

The Hearing Committee in the Anderson Case

Its Origin, Formation, and Status

Origin of the Hearing Committee:

For the past several decades, Canadian university teachers have been engaged in the attempt to achieve recognition of a certain principle. This principle is that, when a faculty member stands accused in a manner affecting his academic or professional competence, his guilt or innocence should be judged by an impartial committee of his peers.

It is important to remember that this principle evolved out of conflict with the governing bodies of universities, and their administrators. Neither the principal or president of a university, nor the chairman of its board of governors should be allowed to arbitrarily and privately dismiss a member of the academic community.

This principle of "judgement by peers" began to win general acceptance only in the 1960's, as the bargaining power of faculty increased, with a proportionate decrease in the traditional power of boards and administrations.

It is important to notice also that the faculty principle of "judgement by peers" evolved and gained general acceptance prior to the days of what is now referred to as "Student Power", and student involvement. The principle of student participation is a relatively recent one; and it has made inroads only in the second half of this decade.

Interested persons should bear these facts in mind as they read the document entitled, "Procedure for Dealing with Complaints Against Faculty Members". This document was drawn up in 1968 by a joint committee consisting of members of the administration and members of the Sir George Williams Association of University Teachers (SGWAUT). The document in question was approved at a meeting of the executive Council of SGWAUT on December 4, 1968. It is necessary to quote this proposed Procedure in full:

This proposal is based upon two main premises:

- 1) The academic deans are responsible for maintaining the quality and standards of the members of their faculty.
- 2) The deans should not be both 'prosecutor' and 'judge' in dealing with faculty members charged with unsatisfactory performance.

The following procedure is suggested in dealing with a complaint about a faculty member.

- 1) The first eight stages of this procedure shall be treated in a confidential manner, if possible.
- 2) A complaint may originate with anyone including the dean of the appropriate faculty if he believes he needs to act to maintain standards.
- 3) The complaint should be available in writing to the appropriate dean, and should under no circumstances be duplicated or circulated, except to the accused.
- 4) The dean should investigate the complaint and exercise judgment as to the seriousness of the complaint; and decide either to drop the matter, or to deal with it informally from his office, or to invoke the full scale process. The dean may first attempt to deal with the complaint informally and invoke the full scale process later if he then deems it necessary. (If the full scale process is chosen, the accused may elect a full hearing, or he may stop the procedure at any time by voluntarily resigning.)
- 5) If procedure is required, the dean should inform the subject of the complaint that he is intending an investigation, and the appointment of an "investigating committee".
- 6) The dean also informs the Vice-Principal (Academic) when he decides an investigation is needed. The Vice-Principal may then choose to follow the suspension procedure outlined in tenure policy.
- 7) The dean appoints three members of the Faculty to solicit and consider written submissions only regarding the complaint. This "investigating committee" will consider the validity of the dean's judgment in terms of the validity of the complaint. They will recommend to the dean whether or not a formal charge should go forward to a full hearing. It should be clear that the purpose of this inquiry is not to judge the guilt of the accused but only to review the dean's decision.
- 8) The "investigating committee" reports as to whether or not the dean's decision is valid. If not, the matter is dropped, the record destroyed, in the presence of the person against whom the complaint has been lodged, and the Vice-Principal so informed.
- 9) If a hearing seems justified, the dean asks Faculty Council to appoint a "hearing committee" of three faculty with tenure. The defendant is invited to be present and heard during the selection of the hearing committee. The dean and the faculty member may choose to present their own cases, or they may name a representative to present their cases, from any source of their choice. Only the three members of the hearing committee may vote upon any final recommendation.
- 10) All hearings and deliberations shall be open unless the accused requests that they be held in camera.
- 11) There shall be a complete transcript of the entire proceedings of the committee kept at the expense of the University.
- 12) The defendant is to be allowed to be present during every part of the proceedings and to have free and rapid access to transcripts.
- 13) All proceedings shall follow a 'Rules of Evidence' which is available to all parties before the event. The 'Rules of

Evidence should be based on legal practice.

- 14) The findings and recommendation of the hearing committee are made to the dean for his action.
- 15) The dean forwards his final recommendation, based upon the committee's report, for implementation by the Vice-Principal (Academic).*
- 16) The defendant may appeal any such decision to the Principal who will thereupon create a review committee as follows: one nominee from S.G.W.A.U.T., one nominee from the Vice-Principal (Academic), and one nominee agreeable to both. The University ombudsman (if one exists) will be present at all proceedings of review committee.
- 17) The review committee shall proceed as it sees fit.
- 18) The decision of this review committee shall be accepted for implementation by the University.*

* If the decision is for termination of a continuous appointment or for dismissal of a faculty member prior to the expiration of a fixed term appointment, tenure procedures must be invoked. Nothing in the procedures shall be interpreted as prejudicing the rights of the accused under applicable tenure procedures.

Approval by SGWAUT Council did not, however, make the document binding on the University community. The Procedures had then to be forwarded for approval to the University Council, the highest academic governing body at Sir George Williams University. Even then, these Procedures would have to be ratified by the (in law) supreme governing body of the University, the Board of Governors.

The Procedures as approved by SGWAUT Council appear on the agenda of the meeting of the University Council held on Friday, December 20, 1968. During the subsequent discussion of this proposal by University Council, a variety of points was raised. For example: it was asked whether the "open" hearings would be open to anyone and everyone, and whether, if the hearings and deliberations were "open", did this mean participation or non-participation on the part of those in attendance? "It was agreed that the work 'open' should be interpreted as 'open' to the University community on a non-participation basis". In the end, it was moved and seconded "that this proposed 'Procedure for Dealing with Complaints Against Faculty Members' be approved in principle and referred back to the Joint Committee for amendment in the light of the points made and agreed upon at this meeting." This motion was carried.

Thus, the procedures that were urgently required for a proper handling of the charges against Professor P. Anderson were approved only "in principle" by the University Council, and referred back to their source for amendment.

There this matter lies. Can one say that these Procedures are now a formal part of the constitution of Sir George Williams University? I suspect not.

Formation of the Hearing Committee:

Although the first known stirrings of what is now referred to as the Anderson affair apparently took place sometime in February 1968, the SGWAUT Procedures and the Hearing Committee do not emerge as positive factors until December 5, 1968.

On this date, the following relevant events took place. Here I quote from a document entitled Chronicle of Events:

December 5

1. Morning: A Black student visits Dean Madras and demands that Professor Anderson be removed from the faculty.
2. Later in the day, Black students visit the Principal, Robert Rae, in his office in the Norris Building and demand the immediate dismissal of Professor Perry Anderson. Principal Rae claims no knowledge of their previous accusations and is unable to contact Professor MacLeod or others who might bring him up to date. Principal Rae refuses to dismiss Professor Anderson without due process.
3. The Principal and the Black students are next seen by witnesses on the 12th floor of the Hall Building looking for Professor MacLeod. While the Principal went to search for Professor MacLeod, one of the Black students found Dr. MacLeod speaking with Professor Anderson. Dr. MacLeod and Professor Anderson joined the Black students in Dr. MacLeod's office, awaiting the return of Principal Rae.
4. Principal Rae meanwhile informs the Council of the Sir George Williams Association of University Teachers of the Black students' demand for Professor Anderson's summary firing. The Council informs Principal Rae of the proposed "Procedure for Dealing with Complaints Against Faculty Members" and delegates Professor Michael Marsden, President of S.G.W.A.U.T., and Professor Taylor Buckner, to bring the document to the Black students' attention as possible means of introducing due process for an investigation of the charges against Professor Anderson.
5. While Professors Marsden and Buckner attempt to explain the procedure to the students, Professor

- Davis arrives and establishes communication with the students.
6. Professor Marsden then visits with Vice-Principal D.B. Clarke, who has assumed responsibility at Principal Rae's request, and proposes that a hearing process be instituted, conforming, in so far as possible, with the procedure recommended by S.G.W.A.U.T. Vice-Principal Clarke agrees and proposes five faculty members to comprise the Hearing Committee. Professor Davis brings the five names to the students in Dr. MacLeod's office. The students accept the formation of a hearing committee. However, they ask to substitute Professors Marsden and Menon for two of the professors on the original list.
 7. Vice-Principal Clarke, the Black students, and Professor Anderson agree to the revised committee membership, namely, Professors A. Adamson (Chairman), C. Bayne, C. Davis, M. Marsden and P. Menon.
 8. Professor Marsden tells Vice-Principal D.B. Clarke that under the proposed S.G.W.A.U.T. procedure the Committee must be appointed formally by the Council of the Faculty concerned (in other words, the Science Faculty Council); that complaints must be available in writing before the investigation proceeds; and that Vice-Principal Clarke should try to conform as much as possible to that procedure.
 9. It is to be noted that:
 - a) the proposed S.G.W.A.U.T. procedures include no provision for consent by the concerned parties on questions of procedure, including the naming of the committee;
 - b) none of the parties involved on December 5 entered into a formal written agreement requiring mutual consent for the naming of the Hearing Committee or its procedures;
 - c) however, in accepting the changes in the committee membership suggested by the Black students and in consulting Professor Anderson about the personnel changes, a precedent may have been set leading the parties to believe that their approval would be sought at each stage of the process.
 10. Vice-Principal Clarke accepts Professor Anderson's request to be temporarily relieved of his teaching duties.

Once again I quote from the Chronicle of Events:

December 6th

Emergency meeting of Science Faculty Council to inform members of the events of the previous day and to ratify selection of the Hearing Committee and its membership. The secretary of the Council was absent, and informal minutes were kept by the chairman, Dean Madras.

December 9th

Members of the Hearing Committee write letter to Vice-Principal Clarke requesting his assurance that the Committee has authority and the confidence of the administration.

December 10th

Vice-Principal Clarke replies by letter assuring the Committee of his backing and confidence.

Status of the Hearing Committee: Law and Justice

Is the Hearing Committee legally constituted?-- this is the question that is being asked by members of the University community, not to mention the general public.

In my view, this question is easily answered by reference to the Act of Incorporation of Sir George Williams University, as first enacted in 1948 by the Legislative Assembly of the Province of Quebec. Article 8 of this Act reads, in part, as follows: "The Board of Governors of the Corporation and their successors in office shall, subject to the provisions of this Act and insofar as the by-laws of the Corporation may provide, administer the affairs of the Corporation in all things".

What this means is that the Board of Governors, acting in and through the Principal, has the legal right and the legal obligation to settle the charges against Professor Anderson by any method that it may deem fit and appropriate. The actions of Acting Principal D.B. Clarke and Vice-Principal J. O'Brien are constitutional, have legal authority, by virtue of the mandate given to the Board of Governors by the Province of Quebec.

Because the Procedures have not been approved by University Council (except "in principle"), or by the Board of Governors, the Procedures have no legal status in the University. The ratification of the Hearing Committee and its membership by the Science Faculty Council at an emergency meeting on December 6, 1968, was not sufficient, presumably, to provide the legal status that is in question here. The Hearing Committee derives its legality, not from the acts of the academic bodies such as the S.G.W.A.U.T. Council, the Science Faculty Council, and the University Council, but rather from the exchange of letters between the Hearing Committee and (then) Vice-Principal Clarke on December 9 and 10, 1968, in which the members of the Hearing Committee request from Vice-Principal Clarke his assurance that the Committee has authority to proceed, and the confidence of the administration, and Vice-Principal Clarke's reply on December 10, in which he states that the Hearing Committee has his backing and confidence.

It is also worth noting that in the Tuesday, January 28, 1969, issue of The Georgian, the following statement appears with reference to the second emergency meeting of Science Faculty Council on December 12, 1968: "The purpose of this meeting, we later discovered, was to disband the legal Committee set up by the Acting Principal Douglass Burns Clarke, and to take punitive measures against the Black students involved." The issue of The Georgian in which this statement appears was "prepared by members of the Black Students' Association in conjunction with the staff of The Georgian". Although the article in which this statement appeared is

unsigned, presumably we may interpret this statement as a recognition on the part of the Black students that the Hearing Committee was, in their opinion, a legally constituted body at the time of its formation in December 1968.

If the question of the legality of the Hearing Committee is easily settled, the question whether the Committee has been justly constituted is far more complex.

It seems reasonably clear that, at the inception of the Hearing Committee on December 5th, 1968, "in accepting the changes in the Committee membership suggested by the Black students and in consulting Professor Anderson about the personnel changes, a precedent may have been set leading the parties to believe that their approval would be sought at each state of the process" (Chronicle of Events). Again, in an entry dated January 10, the Chronicle of Events makes the following statement: "Professor Marsden submits his resignation from the Hearing Committee to Dean Madras, in the Dean's capacity as Chairman of the Science Faculty Council. Professor Marsden says he wished to be free as President of SGWAUT to initiate a review of the responsibilities of faculty, forms of prejudice, and the role of administration in such affairs. He urges that if a replacement is to be found for him, such replacement 'should be acceptable to the students and to Professor Anderson in the spirit of the original agreement on December 5th'."

In other words, the adoption at this time of the relevant portions of the SGWAUT Procedure, in which the principle of "judgement by peers" is annunciated, also involves acceptance of the ostensibly conflicting principle of student consultation and agreement. This at-the-time unrecognized conflict of principle subsequently comes to play an increasingly important and confusing role in the series of events.

To illustrate this point, I shall quote from the document entitled, "Black Students Statement of Position", distributed by the Black students to the public on the morning of January 26, 1969, the day that the official hearing began. "The composition of this hearing committee has been unilaterally decided upon by the Administration; a decision clearly not in conformity with previous agreed upon procedure, that the members of any hearing or investigating committee be agreeable to all parties concerned." In the same document, the Black students demand that "the Administration arrange a meeting of themselves, Professor Anderson and ourselves to settle the composition of the Hearing committee, the procedures under which any hearing will be conducted, and the time of such a hearing".

At this point, I must pause to express regret that the original agreement reached on the evening of December 5, 1968, between the Black students, Professor C. Davis, Professor Marsden, Professor Buckner, and Vice-Principal Clarke was not written down, and signed by those present.

In considering the question of justice, then, we must ask ourselves whether a genuine attempt was made by those involved to act upon the informal agreement to consult with the concerned parties, to seek the active agreement of all concerned parties?

Clearly, there were instances where the Hearing Committee, Acting Principal Clarke and Vice-Principal O'Brien did attempt to achieve such consultation and agreement. On December 13th, there was a meeting in Acting Principal Clarke's office with the Black students, and Mr. David Schwartz, a legal representative of the University. On December 16, Acting Principal Clarke wrote a letter to the Hearing Committee stating that Dean Madras had been given until January 3, 1969 to produce written and signed charges. Acting Principal Clarke also stated that the Black students had agreed to produce written charges by January 11th, if such charges were not forthcoming from Dean Madras.

On January 10, a meeting was held between Acting Principal Clarke, the Black students and Mr. Michael Sheldon (Assistant to the Principal). On January 15, the Hearing Committee received a memorandum to record, written and signed by Mr. Michael Sheldon, describing his impressions and those of Acting Principal Clarke regarding the above-mentioned meeting on January 10. According to this memorandum, "the Black students now take the position that a Hearing Committee consisting solely of faculty members is wrong, but admit that they agreed to such a Committee earlier; Acting Principal Clarke and the students state the view that if lawyers are present at the hearing, they should not be allowed to speak for interested parties. The Acting Principal comments on the kind of procedures the Committee might wish to lay down, but a student points out that such opinions are a matter for the Hearing Committee, which can speak for itself".

In a letter dated January 15, 1969, to the Hearing Committee, Acting Principal Clarke stated that (a) Professor Marsden has tendered his resignation from the Committee, and (b) that he will approve a replacement nominated by the Hearing Committee, and approved by Professor Anderson and the Black students.

On January 16, 1969, the Black students presented a list of demands to the Chairman of the Hearing Committee, Professor Adamson. Professor Adamson agreed with the Black students to arrange a meeting with Acting Principal Clarke, the Hearing Committee, and the Black students, to discuss these new conditions. On January 17 the Black students informed Professor Adamson that Mr. Leo Bertley is on the Hearing Committee; yet they had never sought Professor

Anderson's approval for Mr. Bertley's appointment.

On January 18th, 1969, Professor Adamson wrote a letter to Acting Principal Clarke in which he stated that the Committee has agreed on Professor Knelman as a replacement for Professor Marsden, and that Acting Principal Clarke should contact both parties to obtain their consent.

The above chronicle of events is not intended to be exhaustive, but it does show that from December 5, 1968 through January 18, 1969, both the Hearing Committee and the administration were trying very conscientiously to guarantee mutual consultation with all parties concerned. This attempt to maintain communication and consultation continued on January 20, when Professor Adamson invited the complainants to attend a hearing. A similar invitation was sent out to Professor Anderson and his solicitor. Professor Anderson and his solicitor met with the Hearing Committee during the afternoon of January 20, but the Black students did not appear.

The Hearing Committee issued a second invitation to the Black students, inviting them to a meeting on January 21st. Three of the complainants did appear at this meeting; but when the students were informed of the agreement of the previous day between the Hearing Committee, Professor Anderson and his solicitor, the Black students departed from the meeting in anger.

There is unequivocal evidence that from December 5, 1968 through January 1969, almost to the time of the hearing, sincere attempts were being made by all concerned to consult and co-operate. It is also evident that, at some point on or about January 17, 1969, the confidence of the complainant Black students in the Hearing Committee, and those associated with it, began to break down. I regret that I do not know what were the immediate causes of this breakdown in confidence.

Conclusions

When one considers this collection of facts, it is clear that there is no simple and straightforward conclusion with respect to the question of justice. The answer is not self-evident.

One mitigating circumstance, for all parties, is that events moved more rapidly than the procedures required to deal adequately with them. For example: if in 1967, say, the "Procedure for Dealing with Complaints against Faculty Members" had been ratified by all University bodies, then the unfortunate events of recent weeks might never have occurred. Here, no one is at fault.

The hearing is scheduled for January 26. Two of the original members, Professors Bayne and Davis, inform the Chairman of the Committee and Acting Principal Clarke on January 22nd that they feel an obligation to resign from the Committee. The remaining members of the Hearing Committee recommend to Acting Principal Clarke and to Vice-Principal O'Brien that (a) Professors Bayne and Davis be replaced immediately, and (b) the planned Sunday hearing (January 26th) go on as scheduled. The desire on the part of the administration to see justice done with all due haste led to the determination to proceed with the hearing, already months overdue, as quickly as possible. The January 25 letter from Acting Principal Clarke to Professor Adamson formally appointing Professors F. Knelman and J. Macdonald to the Hearing Committee must be viewed in this light.

The complainant students reiterate their earlier demand that a Committee consisting entirely of faculty members from within the Sir George Williams University community is unsatisfactory. Should the hearing scheduled for Sunday, January 26th proceed as scheduled with the addition of two local faculty members to the Hearing Committee (roughly in accordance with the SGWAUT Procedures, and the legal responsibility of the Principal and the Vice-Principal), or should the hearing be postponed indefinitely until new agreements can be reached?

It is my considered opinion that the motives lying behind the decision to proceed as scheduled, namely, to see justice done without further delay, were good and sufficient.

The Black students, on the other hand, had come to suspect the motives and behaviour of the Hearing Committee and the administration. Throughout the days prior to the hearing, this mistrust escalated. How this suspicion arose, and whether there was just cause for it, I do not know. Perhaps it is sufficient to realize that such mistrust had emerged, thus colouring subsequent decisions and events.

It is my view that coincidence, chance, lack of foresight, the use of informal (and therefore no longer adequate) procedures, particularly in April and May of 1968, the rapidity of events, the desire to see justice done - all play a part in this unhappy story.

I am convinced that Acting Principal Clarke, Vice-Principal O'Brien and the members of the Hearing Committee (past and present) are honourable men. I believe that the actions of these people have been, without exception, a result of their desire to do justice, to see justice done, and to have justice clearly apparent to all observers.

On the other hand, I have no good reason to suspect the integrity of the complainant students. I am prepared to believe that they ~~too are~~ honourable. Clearly, when one attempts to look at the series of events from the Black point of view, one understands their interpretation, even though one may not agree with it.

I do not wish to imply that the Black interpretation is simply an interpretation. The Black students did not receive formal or informal notice of Dean Madras's findings after the May 5, 1968, hearing. For whatever reasons, there were occasions when the complainants were not consulted, in spite of promises that they would be, and in spite of sincere attempts to consult with them. Their desire to have one or more students on the Hearing Committee, though clearly an afterthought, is not unreasonable, especially to those who accept the principle of student participation. Nor is their subsequent wish to have the Hearing Committee consist of people from outside the University community an unreasonable one. Although this too is an afterthought, it was no doubt a consequence of what I have called, for want of a better phrase, the emergent Black point of view.

In writing this opinion, my hope has been that those who have been making hasty judgements will now come to grips with the facts. Although there is no question about the legality of the Hearing Committee, the question of its morality is less clear.

In trying to evaluate the status of the Hearing Committee from the point of view of justice, I frankly admit that there are arguments on both sides. The crucial question then becomes, should the Hearing Committee now be dissolved, in light of the facts and interpretations listed above?

My own opinion is that the Hearing Committee should not be dissolved, and that it should conclude its hearings and publish its findings. If subsequent events or subsequent discoveries demonstrate more clearly than is now apparent that the existence of this Hearing Committee is more unjust than just, then there is a perfectly legitimate safeguard open to all parties concerned.

I refer here to the safeguard described in the letter dated January 24, 1969, from Acting Principal Clarke to Professor Adamson stating that, "in the event of an appeal from the decision of the Hearing Committee to the Vice-Principal (Academic), the Acting Principal is willing to establish an

appeal committee composed of well-known persons from outside the University, and of proven integrity".

If in the end the complainant students and their Black and white supporters are correct, then they have the Acting Principal's written pledge that justice will be served by an appeal committee composed of well-known persons from outside the University. It is my own view that the present Hearing Committee will adequately serve the ends of justice; but those who cannot bring themselves to believe this, have now a guaranteed right to appeal.

Are there grounds for optimism? I do not know. Can those of us who are not directly involved persuade the disputants to acknowledge that good motives exist on both sides? If there is to be a resolution of the present impasse, mutual recognition of good faith is, I submit, the necessary starting-point.

Dr. Stanley G. French
Professor of Philosophy